

IN THE SUPREME COURT OF THE
STATE OF MONTANA

Case No. DA 23-0575

RIKKI HELD, et al.,

Plaintiffs and Appellees,

v.

THE STATE OF MONTANA, et al.,

Defendants and Appellants.

Appeal from the Montana First Judicial Court
Lewis and Clark County
The Honorable Kathy Seeley, Presiding
Court Cause No. CDV 2020-307

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

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Attorneys for Amici Applicants: Montana Senate President as Officer of the Legislature and The Speaker of the Montana House of Representatives as Officer of the Legislature.

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I. INTRODUCTION

Pursuant to the Montana Rules of Appellate Procedure and the Montana Code Annotated, The Officers of the Legislature, through the Montana Senate President and The Speaker of the Montana House of Representatives ("The Officers of the Legislature"), respectfully move for leave of court to file a brief of an amicus curiae supporting Appellants. M. R. App. P. 12(7) and 16, Mont. Code Ann. §5-2-107(2). The Officers of the Legislature have a unique interest in this litigation that the current parties or other Amicus will not present. R. App. P. 12(7).

II. ARGUMENT

M. R. App. P. 2(2) provides: "One who is not a party, but who, upon invitation or leave of the supreme court granted on motion, files a brief in a pending proceeding because of a strong interest in the subject matter." A motion for leave shall (1) identify the interest of the applicant, (2) state the reasons why a brief of an amicus curiae is desirable, (3) identify the party whose position amicus supports, (4) provide the date upon which the brief can be filed, and (5) indicate whether the other party consents to the request."

The Montana Supreme Court finds the Ninth Circuit precedent persuasive on whether motions for leave to file Amicus should be granted. *See Sportsmen for I-143 v. Montana Fifteenth Judicial Dist. Court, Sheridan Cnty.*, 2002 MT 18, ¶ 12, 308 Mont. 189, ¶ 194, 40 P.3d 400, 403. Granting The Officers of the Legislature leave to file its amicus curiae aligns with Ninth Circuit precedent because The Officers of the Legislature have unique information and perspective to help the court beyond what the parties' lawyers can do. *See Duronslet v. Cty. of L.A.*, Case No. 2:16-cv-08933-ODW (PLAx), 2017 WL 5643144, at *2 (C.D. Cal. Jan. 23rd, 2017).

A. The Officers of the Legislature have a Unique Interest in this Appeal.

Applicants consist of Montana's Senate President and Speaker for the House of Representatives as The Officers of the Legislature. The Legislature is given specific and unique constitutional authority, apart and separate from the executive branch and judicial branch, to consider numerous laws in each legislative session under Article V of the Montana Constitution. The Legislature's duties include drafting, amending, and passing laws concerning environmental protection. Given the many laws enacted since adopting the Montana Constitution in 1972, the legislative branch is uniquely positioned to explain how it has passed environmental protection laws and related enforcement mechanisms to fulfill its duty.

B. The Officers of the Legislature's Amicus Curiae is Desirable.

The brief is desirable to aid the Supreme Court in understanding the Legislature's role in fulfilling its constitutional responsibilities to ensure the promise of a clean and healthful environment under Article II, Section 3 of the Montana Constitution. Additionally, the brief will assist the court in understanding the Legislature's mandates to "provide for the administration and enforcement of this duty" and "provide adequate remedies to prevent unreasonable depletion and degradation of natural resources," according to Article IX, Section 1 of the Montana Constitution.

C. Identify the Party whose Position Amicus Supports. The Officers of the Legislature support the position of the Appellants.

D. The date upon which the brief can be filed. Appellant's brief is due on February 13, 2024. The applicant's brief can be filed within ten (10) days of the Appellant's opening brief.

E. Whether the other party consents. Counsel for Appellants do not object. Counsel for Appellees did not respond with their position prior to filing this motion.

DATED this 5th day of February 2024.

Respectfully submitted,
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By: _____/s/_____

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CERTIFICATE OF SERVICE

I, Abby Moscatel, hereby certify that on Feb. 5th, 2024, I served upon the following a true and correct copy of the foregoing by depositing a true copy in the U.S. mail, postage prepaid, and by electronic mail addressed as follows:

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I, Abby Jane Moscatel, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 02-05-2024:

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